

BEFORE THE BOARD OF PERSONNEL APPEALS

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IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE #20-76:

DANIEL JAMES MULLAN, PRESIDENT,)
VICTOR FEDERATION OF TEACHERS,)

Complainant,)

-vs-

FINAL ORDER

DUANE W. REAGAN, SUPERINTENDENT)
OF SCHOOLS, VICTOR PUBLIC)
SCHOOLS,)

Defendant.)

* * * * *

The Board of Personnel Appeals, having heard oral argument
in the above-captioned matter on January 18, 1977, finds as
follows:

IT IS ORDERED, that the Exceptions to the Hearing Examiner's
Findings of Fact, Conclusions of Law and Recommended Order, filed
December 9, 1976, by Duane W. Reagan, Superintendent of Victor
Public Schools, are denied.

IT IS FURTHER ORDERED, that the Findings of Fact, Conclusions
of Law and Recommended Order of the Hearing Examiner, Mr. Jeff
Andrews, dated November 17, 1976, are upheld as written.

DATED this 27th day of January, 1977.

BOARD OF PERSONNEL APPEALS

BY Brent Cromley
Brent Cromley
Chairman

(ATTACHMENT B)

IN THE MATTER OF UNFAIR LABOR PRACTICE: ULP - #20-76

DANIEL JAMES MULLAN, PRESIDENT)
 VICTOR FEDERATION OF TEACHERS,)
 Complainant,)
 -vs-)
 DUANE W. REAGAN, SUPERINTENDENT)
 OF SCHOOLS, VICTOR PUBLIC SCHOOLS,)
 Defendant.)

FINDINGS OF FACT
 CONCLUSIONS OF LAW
 AND RECOMMENDED ORDER

On July 2, 1976, Mr. Daniel J. Mullan, President of the Victor Federation of Teachers, affiliated with the Montana Federation of Teachers, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against Duane W. Reagan, Superintendent of Schools, Victor Public Schools.

The charge alleges that Section 59-1605(1)(e), R.C.M., 1947, has been violated in that Mr. Reagan has refused to bargain in good faith with the Victor Federation of Teachers.

A hearing in the above captioned matter was held on October 6, 1976, in the Conference Room of the Ravalli County Courthouse, Hamilton, Montana. The Victor Federation of Teachers was represented by Mr. David L. Astle of the law firm of Astle and Astle, Kalispell, Montana; Mr. Reagan represented himself.

As the duly-appointed hearing examiner of the Board of Personnel Appeals, I conducted the hearing in accordance with the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M., 1947).

After a thorough review of the record of this case, I make the following:

FINDINGS OF FACT

1. That the Victor Federation of Teachers has been certified as the exclusive representative for the teachers in the Victor Public Schools.
2. That there is currently no contract in effect between the Federation and the School District.
3. That no negotiations toward writing a contract have been held.
4. That Mr. Mullan, President of the Federation, has requested of Mr. Reagan, Superintendent of Victor Schools, that negotiations commence.
5. That Mr. Reagan, on behalf of the School Board, has offered to negotiate a master contract for the 1977-78 school year, but has refused to negotiate a master contract for the 1976-77 school year.

1 6. That the Victor teachers have signed individual contracts with the
2 School Board for the 1976-77 school year.

3 DISCUSSION

4 The Victor Federation of Teachers has been authorized as the exclusive
5 representative of the Victor teachers, yet there is no master contract
6 between the Victor Federation of Teachers and the Victor School Board and
7 no negotiations have taken place toward reaching such a contract.

8 Mr. Reagan, as an agent of the School Board, has refused to bargain on
9 the grounds that the individual contracts with the teachers are binding and
10 sufficient and that the newly certified representative, the V.F.T., must
11 honor these contracts signed prior to the V.F.T.'s certification.

12 In unfair labor practice cases, we can often look to decisions of the
13 National Labor Relations Board for guidance as the NLRB is charged with inter-
14 preting statutes which are virtually identical to our Montana statutes in this
15 area.

16 The NLRB has consistently held that when one exclusive representative
17 succeeds another, the successor organization is not bound by any agreements
18 made by the previous representative. The most definitive interpretation takes
19 place in the American Seating Corporation¹ decision which states:

20 ". . . workers who lawfully changed their bargaining agent
21 are not bound by contract negotiated by them as principals
22 through their old bargaining agent beyond the time of the
new bargaining agent's certification."

23 Put in the simplest terms, a new certified representative is entitled to
24 negotiate a new contract, and refusal of the employer to bargain is a perse
25 violation of the good faith bargaining duty.

26 The question of individual teaching contracts has been raised and should
27 be answered. The Montana Legislature has placed teachers under the Public
28 Employees Collective Bargaining Act. Yet, the Legislature provides for individ-
29 ual contracts for teachers, a provision not made for any other public employees.

30 It is a fundamental principle of statutory interpretation that statutes
31 must be interpreted, if possible, so that they are not conflicting. Therefore,

32 1. American Seating Corporation, 106 NLRB 250, 32 LRRM 1439 (1953)

1 in interpreting the action of the Legislature of placing the teachers under
2 the Public Employees Collective Bargaining Act, which gives public employees
3 the right to bargain collectively and to engage in other concerted activities,
4 along with Section 75-6102, R.C.M., 1947, requiring the issuance of individual
5 contracts, it becomes obvious that the intention of the Legislature was not
6 to allow the substitution of individual contracts to that of the master
7 agreement.² Such a substitution would remove the collective from collective
8 bargaining.

9 Mr. Reagan contends that individual contracts can substitute for a
10 master agreement. I can find no justification for such a contention. Were
11 there a master agreement in effect, it would still not be binding on the
12 V.F.T. as a successor representative is not bound to agreements made by the
13 previous representative. Therefore, I can find no justification for Mr.
14 Reagan's refusal to negotiate a contract with the V.F.T.

15 It should be noted that while Mr. Reagan is named as the defendant in
16 this action it is well understood that it is in his capacity as Superintendent
17 of Schools that he is charged. In this capacity he is the chief executive
18 agent for the School Board. It is virtually impossible to separate Mr.
19 Reagan's actions from those of the School Board. Therefore, any recommended
20 affirmative action shall be incumbent upon not only Mr. Reagan but on the
21 Victor School Board as well.

22 CONCLUSIONS OF LAW

23 The allegation that Duane W. Reagan, Superintendent of Victor Schools,
24 has engaged in an unfair labor practice within the meaning of Section 59-1605(1)(e)
25 R.C.M., 1947, by refusing to negotiate in good faith with an exclusive repre-
26 sentative, has been sustained.

27
28
29 2. For further discussion on the matter of individual teaching
30 contracts, see Board of Personnel Appeals, ULP #17, 1976,
31 Final Order, which is recommended because of its clarity and
32 eloquence.

RECOMMENDED ORDER

It is hereby ordered that Duane W. Reagan, Superintendent of Victor Schools:

1. Cease and desist from failing to bargain in good faith with the Victor Federation of Teachers relative to the drafting of a master agreement.

2. Take the following affirmative action:

(a) Upon request of the Federation, meet and bargain collectively, in good faith, regarding wages, hours, and other conditions of employment.

(b) Notify the Administrator of the Board of Personnel Appeals, in writing, of what steps have been taken to comply herewith.

DATED this 17th day of November, 1976.

BOARD OF PERSONNEL APPEALS

BY

Jeff Andrews
Jeff Andrews
Hearing Examiner

CERTIFICATE OF MAILING

I, Janice M. Fishburn, hereby certify and state that I mailed a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Duane W. Reagan
Supt. of Schools
Victor Public Schools
Victor, MT 59875

Daniel James Mullan
President
Victor Federation of Teachers
112 Crestline Drive
Missoula, MT 59801

James McGarvey
Executive Director
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DATED this 17th day of November, 1976.

Janice M. Fishburn
Janice M. Fishburn